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EXAMINER

MOUZON, LAJUANIA N

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2153

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--|--------------------------------------|--|
| Office Action Summary | Application No. 10/828,760 | Applicant(s) WARREN ET AL. | |
| | Examiner La Juania N. Mouzon | Art Unit 2153 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/18/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Office Action is in response to Applicant's Amendment filed 1/18/2008.
Claims 1-28 are pending. Claim 28 is new added.

Specification

2. Applicant's amendments to the specification filed on 1/18/2008, have been fully considered and are persuasive. The objections to the specification have been withdrawn.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The amendments to claim 7 calls for the client to possess an algorithm to generate wait hints to reduce the load at the messaging server. The specification only speaks of having a provider side algorithm to generate wait hints. Therefore the client side algorithm is considered new matter.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1, 11-14, 17, 17, 21, and 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phaal (US 6,006,269) and further in view of Belissent (US 6,799,276).

8. In regards to claims 1 and 26 Phaal discloses, at a computer system and a computer program product that is network connectable to a messaging server, the computer system configured to provide user access to data stored at the messaging server, a method for requesting data that provides an improved user experience when the messaging server is experiencing increased load (**Col. 4 line(s) 46-57**), the method and the computer program product comprising one or more computer storage media having stored thereon computer-executable instructions comprising:

- a. an act of sending a data request to the messaging server (**Fig. 1 and Col. 5 line(s) 17-24, teach the client (#19) sending a data request (#21) to the host (server #15).;**
- b. an act of receiving a server response including an adaptively generated wait hint, the adaptively generated wait hint being an indication that the messaging server was unable to process the data request (**Fig. 1 and Col. 6 line(s) 12-29, teach the client receiving a response from the server (#33, message from the deferral manager (#31) to the client.) including an amount of time (wait hint) in which the client should wait before trying its request, because the server is unable to process the request.),** the adaptively generated wait hint generated by a wait hint generation algorithm, the wait hint generation algorithm configured to adaptively generate a wait hint for each attempt in a plurality of attempts to send the data request (**Col. 6 line(s) 25-30, teach that the combination of the deferral manager (#31) and the scheduler (#35) calculates a wait time for each message to be deferred. Therefore it is inherent if not obvious that when any calculation is done it uses an algorithm.),** each wait hint including an indicated wait time indicating an amount of time the computer system is to wait before attempting to resend the data request, each wait hint generated (**Col. 6 line(s) 27-29, Col. 6 line(s) 62-66 - Col. 7 line(s) 1-11);**
- c. an act of waiting a specified wait time before resending the data request to thereby reduce the load on the messaging server, the specified wait time based

on the indicated wait time (**Col. 7 line(s) 4-11, teach the client waiting the specified time indicated in the wait hint to reduce load on the server, as stated in Col. 4 line(s) 45-53**); and

d. an act of resending the data request subsequent to waiting the specified wait time (**Col. 7 line(s) 7-11**).

9. Phaal's do not teach the generating a wait hint based on how many prior attempts to send the data request have occurred, up to a specified number of attempts after which the data request is processed at the message server.

10. In the same field of endeavor Belissent's teach sending a message to a messaging client (**Col. 4 line(s) 37-44**), calculating a wait time based on previous client attempt and processing them based on a threshold (**Col. 3 line(s) 54-65, Col. 5 line(s) 40-48, Col. 6 line(s) 3-9**).

11. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis with Belissent's teaching as discussed above to allow for the capability of setting a waiting/deferral time for a request to eliminate the flooding of request to servers exacerbated by the limited bandwidth and to reduce the load on the server.

12. In regards to claim 11 Phaal discloses, an act of receiving message related data corresponding to the data request subsequent to resending the data request **(Fig. 1 and Col. 5 line(s) 17-24, teach the client (#19) receiving a response corresponding to the request (#23), from the server (#17).);** and an act of updating a message interface to reflect that the message related data was received **(Fig. 1 and Col. 5 line(s) 17-24, it is inherent that the outgoing messages being received by the client will update the message interface to reflect the data received..**

13. In regards to claim 12 Phaal discloses, an act of causing a message interface to indicate that the data request is still being processed notwithstanding that the messaging server was unable to process the data request **(Col. 6 line(s) 62-67 – Col. 7 line(s) 1-3, teach that the deferral manager downloading a webpage (message interface) to the client indicating that the server was unable to process the request.).**

14. In regards to claim 13 Phaal discloses, the act of causing a message interface to indicate that the data request is still being processed comprises a message provider causing a messaging interface to indicate that the data request is still being processed **(Col. 6 line(s) 62-67 – Col. 7 line(s) 1-3, teach the deferral manager (message provider) downloading a webpage (message interface) to the client indicating that the request is still being processed.).**

15. In regards to claims 14 and 27 Phaál discloses, at a computer system and a computer program product that is network connectable to a plurality of clients, the computer system configured to process client data requests for data maintained at the computer system and return appropriate data to corresponding requesting clients, a method for regulating client requests so as to provide an improved user experience when the messaging server is experiencing increased load (**Col. 4 line(s) 46-57**), the method and the computer program product comprising one or more computer storage media having stored thereon computer-executable instructions comprising:

- e. an act of receiving a client data request from a client (**Fig. 1 and Col. 5 line(s) 17-27, teach the host (#15, server) receiving a request (#21) from the client (#19).;**
- f. an act of determining that the computer system is unable to process the client data request, subsequent to receiving the client data request (**Col. 6 line(s) 12-15, teach the admission control gateway verifying if the server has the appropriate resources to perform the request.);**
- g. an act of adaptively generating a wait hint, the adaptively generated wait hint including an indicated wait time indicating an amount of time that the client is to wait before resending the client data request to thereby reduce the load at the computer system (**Col. 6 line(s) 26-29, teach the deferral manager, in conjunction with a scheduler, generating a wait hint. The wait hint including the amount of time the client waits before resending the request to reduce the load at the computer system.);** the adaptively generated wait

hint generated by a wait hint generation algorithm, the wait hint generation algorithm configured to adaptively generate a wait hint for each attempt in a plurality of attempts to send the data request (**Col. 6 line(s) 25-30, teach that the combination of the deferral manager (#31) and the scheduler (#35) calculates a wait time for each message to be deferred. Therefore it is inherent if not obvious that when any calculation is done it uses an algorithm.**); and

h. an act of sending a server response that includes the adaptively generated wait hint to the client (**Fig. 1 and Col. 6 line(s) 26-29, teach the client receiving a response from the server (#33, message from the deferral manager (#31) to the client.) including an amount of time (wait hint) in which the client should wait before trying its request, because the server is unable to process the request.**).

16. Phaal's do not teach the generating a wait hint based on how many prior attempts to send the data request have occurred, up to a specified number of attempts after which the data request is processed at the message server.

17. In the same field of endeavor Belissent's teach sending a message to a messaging client (**Col. 4 line(s) 37-44**), calculating a wait time based on previous client attempt and processing them based on a threshold (**Col. 3 line(s) 54-65, Col. 5 line(s) 40-48, Col. 6 line(s) 3-9**).

18. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis with Belissent's teaching as discussed above to allow for the capability of setting a waiting/deferral time for a request to eliminate the flooding of request to servers exacerbated by the limited bandwidth and to reduce the load on the server.

19. In regards to claim 17 Phaal discloses, wherein the act of determining that the computer system is unable to process the client data request comprises an act of determining that the computer system lacks the resources to process the client data request in parallel with other requests that are being processed (**Col. 5 line(s) 58-67 - Col. 6 line(s) 1-15, teach there is a resource monitor that monitors the resources of the system and the admission control gateway verifies if there is enough resources to process the request in conjunction (parallel) with other request already being processed.)**).

20. In regards to claim 18 Phaal discloses, wherein the act of determining that the computer system is unable to process the client data request comprises an act of determining that the computer system is already processing a configured maximum number of requests that can be processed in parallel (**Col. 5 line(s) 65-67 – Col. 6 line(s) 1-3, teach the resource monitor having defined parameters setting the desired maximum load or threshold. It is inherent that these parameters include the number of request that can be processed in parallel.)**).

21. In regards to claim 21 Phaal discloses, wherein the act of adaptively generating a wait hint comprises an act of generating a wait hint in accordance with a wait hint generation algorithm that accesses external configurable parameter values **(table 1, Col. 6 line(s) 29-30, Col. 10 line(s) 24-25, 32-35).**

22. In regards to claim 28 Phaal discloses wherein receiving a server response including an adaptively generated wait hint comprises an act of receiving an adaptively generated wait hint having indicated wait time differing from the indicated wait hint time the wait hint generation algorithm is configured to generate for other attempts, in the plurality of attempts, to send the data request **(table 1, Col. 6 line(s) 29-30, Col. 10 line(s) 24-25, 32-35, teach that the wait time can be configurable by an administrator at any time. Therefore it would have been obvious that a wait time can be generated differing from the algorithm when administer by the manually by the administrator to give a longer or higher wait to the request to prevent the server from overloading.).**

23. Claims 2-5, 7-9, 15, 16, 23, 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Phaal (US 6,006,269) and in view of Belissent (US 6,799,276), as applied to claims 1 and 14 above, and further in view of Mukundan et al. (US PGPub 2007/0016639).

24. In regards to claims 2 and 15 neither Phaal nor Belissent teach wherein the act of sending a data request to the messaging server comprises an act of sending a synchronization request.

25. In the same field of endeavor Mukundan et al. teach sending a synchronization request to a server and notifying the client that the processing will exceed a threshold length of time (**fig. 5A #528, fig. 42, ¶0110, ¶0154, ¶0532 line(s) 3, claims 1 and 33**).

26. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mukundan et al. teaching as discussed above to allow for the capability of synchronizing the data from one computer to another in order to have the most current or up to date information, for instance when sharing files/data on a central location (server).

27. In regards to claims 3 and 16 neither Phaal nor Belissent teach wherein the act of sending a data request to the messaging server comprises an act of issuing an RPC call.

28. In the same field of endeavor Mukundan et al. teach sending a synchronization request to a server and notifying the client that the processing will exceed a threshold length of time. Wherein the request is a RPC call (**fig. 5A #528, fig. 42, ¶0110, ¶0154, ¶0532 line(s) 3, claims 21 and 34**).

29. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mukundan et al. teaching as discussed above to allow for the capability of using a conventional method of communicating information/data between two computers.

30. In regards to claims 4 and 23 Phaal discloses, wherein the act of receiving a server response including an adaptively generated wait hint comprises an act of receiving a buffer from the server in response to request (**Col. 6 line(s) 61-65, teach the client receiving from the server the wait hint and a buffer (webpage) in response to a request.**).

31. Neither Phaal nor Belissent teach wherein the request is an RPC call.

32. In the same field of endeavor Mukundan et al. teach sending a synchronization request to a server and notifying the client that the processing will exceed a threshold

length of time. Wherein the request is a RPC call (**fig. 5A #528, fig. 42, ¶0110, ¶0154, ¶0532 line(s) 3, claims 21 and 34**).

33. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mukundan et al. teaching as discussed above to allow for the capability of using a conventional method of communicating information/data between two computers.

34. In regards to claims 5 and 24 Phaal discloses, wherein the act of receiving a buffer from the server in response to a Request comprises an act of receiving a buffer that includes an error code and a corresponding wait hint.

35. Neither Phaal nor Belissent teach wherein the response is an RPC call including a buffer that includes an error code, the error code indicating that the server was busy.

36. In the same field of endeavor Mukundan et al. teach sending a synchronization request to a server and notifying the client that the processing will exceed a threshold length of time. Wherein the request is a RPC call (**fig. 5A #528, fig. 42, ¶0110, ¶0154, ¶0532 line(s) 3, claims 21 and 34**). Likewise, the server replies using a RPC call. It is

obvious that the reply includes a buffer with an error code to let the client know it is busy because it updates a progress bar for example to inform the user of the time left for processing (**¶0531 line(s) 1-4, 13-16**).

37. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mukundan et al. teaching as discussed above to allow for the capability of sending notification to the user that the server is busy so the user will not get impatient and keep resending the same request and overloading the server.

38. In regards to claim 7 neither Phaal nor Belissent, wherein the act of waiting a specified wait time in accordance with the adaptively generated wait hint comprises of applying the wait hint to a client side algorithm that attempts to reduce the load at the messaging server.

39. In the same field of endeavor Mukundan et al. teach sending a synchronization request to a server and notifying the client that the processing will exceed a threshold length of time (**fig. 5A #528, fig. 42, ¶0110, ¶0154, ¶0532 line(s) 3, claims 21 and 34**). Wherein the client has control of the actually increasing or reducing the wait time (hint),

it is obvious that the client can use an algorithm to calculate/ generate the wait time (hint) (**¶00531 line(s) 9-14**).

40. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mukundan et al. teaching as discussed above to allow for the capability of giving the control of calculating/generating the wait hint to the client to reduce the possibility having all the request being resent at the same time.

41. In regards to claim 8 Phaal discloses, wherein the act of resending the data request subsequent to waiting the specified time comprises reissuing a request that was originally issued to send the data request (**Col. 7 line(s) 7-10**).

42. Neither Phaal nor Belissent teach wherein the request is an RPC call.

43. In the same field of endeavor Mukundan et al. teach sending a synchronization request to a server and notifying the client that the processing will exceed a threshold length of time. Wherein the request is a RPC call (**fig. 5A #528, fig. 42, ¶0110, ¶0154, ¶0532 line(s) 3, claims 21 and 34**).

44. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mukundan et al. teaching as discussed above to allow for the capability of using a conventional method of communicating information/data between two computers.

45. In regards to claim 9 neither Phaal nor Belissent teach an act of receiving a synchronization command from a user.

46. In the same field of endeavor Mukundan et al. teach sending a synchronization request to a server and notifying the client that the processing will exceed a threshold length of time (**fig. 5A #528, fig. 42, ¶0110, ¶0154, ¶0532 line(s) 3, claims 1 and 33**).

47. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mukundan et al. teaching as discussed above to allow for the capability of synchronizing the data from one computer to another

in order to have the most current or up to date information, for instance when sharing files/data on a central location (server).

48. Claims 6, 10, 19, 20 and 25 rejected under 35 U.S.C. 103(a) as being unpatentable Phaal (US 6,006,269) and further in view of Belissent (US 6,799,276) as applied to claims 1 and 14 above, and further in view of Mincher et al (US 5,604,869).

49. In regards to claim 6 neither Phaal nor Belissent teaches an act of generating the specific wait time by randomizing the indicated wait time with a threshold time of the indicated wait time, the specified wait time differing from the indicated wait time such that a number of clients receiving the adaptively generated wait hint resend data requests at different times.

50. In the same field of endeavor Mincher et al. teach sending a message request to **(fig. 6 #70-71 and Col. 7 line(s) 60-63, 66-67)**. When the server is busy delaying the message a specified amount of time **(fig. 6 #75-76 and Col. 8 line(s) 20-21)**. Wherein the time is calculated using a conventional back off algorithm **(Col. 8 line(s) 22-26)**. Likewise the algorithm also randomizes the wait time to reduce the potential for collisions between nodes trying to gain access simultaneously **(Col. 8 line(s) 30-33)**.

51. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages

admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mincher et al. teaching as discussed above to allow for the capability reduce the potential for collisions between nodes trying to gain access simultaneously.

52. In regards to claim 10 Phaal discloses, an act of receiving a second server response including a second adaptively generated wait hint subsequent to resending the data request, the second adaptively generated wait hint being an indication that the messaging server was unable to process the resent data request **(Col. 9 line(s) 41-44, 60-65), (Col. 7 line(s) 4-11, teach the client waiting the specified time indicated in the wait hint to reduce load on the server, as stated in Col. 4 line(s) 45-53);** and an act of resending the data request subsequent to waiting the second specified wait time **(Col. 7 line(s) 7-11).**

53. Neither Phaal nor Belissent teach the second adaptively generated wait hint having a second different indicated wait time differing from the indicated wait time.

54. In the same field of endeavor Mincher et al. teach sending a message request to **(fig. 6 #70-71 and Col. 7 line(s) 60-63, 66-67).** When the server is busy delaying the message a specified amount of time **(fig. 6 #75-76 and Col. 8 line(s) 20-21).** Wherein the time is calculated using a conventional back off algorithm **(Col. 8 line(s) 22-26).**

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Likewise the algorithm can include an exponential component that varies the amount of time to wait depending on the number of times the media is found busy (**Col. 8 line(s) 27-30**). Therefore generating different wait times each time the request is received and deferred.

55. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mincher et al. teaching as discussed above to allow for the capability of setting a waiting/deferral time for a request, by an algorithm, to eliminate the flooding of request to servers exacerbated by the limited bandwidth and to reduce the load on the server.

56. In regards to claim 19 neither Phaal's nor Belissent's teach wherein the act of adaptively generating a wait hint comprises an act of varying the indicated wait time between successive adaptively generated wait hints in accordance with the wait hint generation algorithm.

57. In the same field of endeavor Mincher et al. teach sending a message request to (**fig. 6 #70-71 and Col. 7 line(s) 60-63, 66-67**). When the server is busy delaying the message a specified amount of time (**fig. 6 #75-76 and Col. 8 line(s) 20-21**). Wherein

the time is calculated using a conventional back off algorithm (**Col. 8 line(s) 22-26**).

Likewise the algorithm can include an exponential component that varies the amount of time to wait depending on the number of times the media is found busy (**Col. 8 line(s) 27-30**).

58. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mincher et al. teaching as discussed above to allow for the capability of setting a waiting/deferral time for a request, by an algorithm, to eliminate the flooding of request to servers exacerbated by the limited bandwidth and to reduce the load on the server.

59. In regards to claim 20 neither Phaal's nor Belissent's teach, wherein the act of varying the indicated wait time between successive adaptively generating wait hints in accordance with wait hint generation algorithm comprises an act of increasing the indicated wait time for each successive wait hint corresponding to the same data request.

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60. In the same field of endeavor Mincher et al. teach sending a message request to **(fig. 6 #70-71 and Col. 7 line(s) 60-63, 66-67)**. When the server is busy delaying the message a specified amount of time **(fig. 6 #75-76 and Col. 8 line(s) 20-21)**. Wherein the time is calculated using a conventional back off algorithm **(Col. 8 line(s) 22-26)**. Likewise the algorithm can include an exponential component that varies/increases the amount of time to wait depending on the number of times the media is found busy **(Col. 8 line(s) 27-30)**.

61. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mincher et al. teaching as discussed above to allow for the capability of setting a waiting/deferral time for a request, by an algorithm, to eliminate the flooding of request to servers exacerbated by the limited bandwidth and to reduce the load on the server.

62. In regards to claim 25 Phaal discloses, an act of receiving a resent client data request from the client, the resent client data request requesting the same data as the client request **(Col. 9 line(s) 38-44, teach the server receiving a second request, for the same data that was previously deferred.)**; an act of determining that the computer system is again unable to process the resent client data request, subsequent

to receiving the resent client data request **(It is inherent that the resent client request mentioned in Col. 9 line(s) 38-44 uses the same process to determine if the client has the appropriate resources to process the request as mentioned in Col. 6 line(s) 12-15.)**; an act of adaptively generating a second wait hint, the adaptively generated second wait hint including a second indicated wait time indicating a second amount of time the client is to wait before again resending the resent client data request to thereby reduce the load at the computer system **(Col. 6 line(s) 26-29, teach the deferral manager, in conjunction with a scheduler, generating a wait hint. The wait hint including the amount of time the client waits before resending the request to reduce the load at the computer system. It is inherent that the same process is used for the second request as the first.)**; and an act of sending a second server response that includes the adaptively generated second wait hint to the client **(Fig. 1 and Col. 6 line(s) 26-29, teach the client receiving a response from the server (#33, message from the deferral manager (#31) to the client.) including an amount of time (wait hint) in which the client should wait before trying its request, because the server is unable to process the request. It is inherent that the same process is used for the second request as the first.)**.

63. Neither Phaal nor Belissent's teach the seconding indicated wait time differing from the indicated wait time in accordance with the configuration of the wait hint generation algorithm.

64. In the same field of endeavor Mincher et al. teach sending a message request to **(fig. 6 #70-71 and Col. 7 line(s) 60-63, 66-67)**. When the server is busy delaying the message a specified amount of time **(fig. 6 #75-76 and Col. 8 line(s) 20-21)**. Wherein the time is calculated using a conventional back off algorithm **(Col. 8 line(s) 22-26)**. Likewise the algorithm can include an exponential component that varies the amount of time to wait depending on the number of times the media is found busy **(Col. 8 line(s) 27-30)**. Therefore generating different wait times each time the request is received and deferred.

65. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Mincher et al. teaching as discussed above to allow for the capability of setting a waiting/deferral time for a request, by an algorithm, to eliminate the flooding of request to servers exacerbated by the limited bandwidth and to reduce the load on the server.

66. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable Phaal (US 6,006,269) and in view of Belissent (US 6,799,276) as applied to claim 14 above, and further in view of Garg et al. (2002/0138613).

67. In regards to claim 22 neither Phaal's nor Belissent wherein the act of adaptively generating a wait hint comprises an act of generating a wait hint for a data request based on the connection speed of the client that sent the data request.

68. In the same field of endeavor Garg et al. teach sending a request to the server and the delaying the request based on the connection speed (amount of bandwidth) (**¶0016 line(s) 19-21**) while sending back the amount of time the request will wait before resending the request (**¶0018 line(s) 11-12**).

69. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Phaal's admission control system with messages admitted or deferred for re-submission at a later time on a priority basis and Belissent method and apparatus for restraining connection request stream associated with high volume burst client in a distributed network with Garg et al. teaching as discussed above to allow for the capability of preventing backlogs due to repeated retries.

Response to Arguments

70. Applicant's arguments with respect to claims 1-28 have been considered but are moot in view of the new ground(s) of rejection.

71. Applicant's arguments, see pg. 18, filed 1/18/2008, with respect to the drawings have been fully considered and are persuasive. The objections of the drawings have been withdrawn.

Conclusion

72. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to La Juania N. Mouzon whose telephone number is 571-270-3045. The examiner can normally be reached on Monday - Friday 8:00-5:00, 1st Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2153

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LNM

/Yasin M Barqadle/

Primary Examiner, Art Unit 2153